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267 NLRB No. 53

D--9920
Miami Beach, FL

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LARTER, N.V. d/b/a SEA ISLE HOTEL

and

Case 12--CA--10588

HOTEL, MOTEL, RESTAURANT AND
HI-RISE EMPLOYEES AND BARTENDERS
UNION, LOCAL 355

DECISION AND ORDER

Upon a charge filed on 24 February 1983 and an amended charge filed on 6 April 1983 by Hotel, Motel, Restaurant and Hi-Rise Employees and Bartenders Union, Local 355, herein called the Union, and duly served on Larter, N.V. d/b/a Sea Isle Hotel, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 12, issued a complaint on 7 April 1983 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, amended charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

Respondent failed to file an answer to the complaint or request an extension of time for filing an answer.

On 5 May 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on 9 May 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and, accordingly, the allegations in the complaint and Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent on 7 April 1983 specifically states that, unless an answer to the

complaint is filed by Respondent within 10 days from the service thereof, ''all of the allegations of the complaint shall be deemed to be admitted to be true and may be so found by the Board.'' Further, according to the uncontroverted allegations of the Motion for Summary Judgment, by letter dated 20 April 1983, served by certified mail, and attached to the Motion for Summary Judgment, Respondent was advised that unless an answer was filed by 25 April 1983 summary judgment would be sought. As noted above, Respondent has failed to file an answer to the complaint or to respond to the Notice To Show Cause.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we shall grant the General Counsel's Motion for Summary Judgment.[1]

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

At all times material herein, Respondent, a Netherlands Antilles corporation with an office and place of business in

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[1] In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

Miami Beach, Florida, has been engaged in the operation of a hotel providing food and lodging for guests. During the calendar year ending 31 December 1981, a representative period, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000. During the same period of time, Respondent purchased and received at its Miami Beach, Florida, facility products, goods, and materials valued in excess of $5,000 which were shipped directly from points outside the State of Florida.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Hotel, Motel, Restaurant and Hi-Rise Employees and Bartenders Union, Local 355, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All employees employed by the Employer in the housekeeping department, food and beverage department, including cashiers and checkers, front service department, telephone communications department, maintenance and engineering department and laundry department; but excluding all of the front office cashiers and other clerical employees, executives, department heads, managerial employees, guards and

supervisors as defined by the National Labor Relations Act.

B. Respondent's Refusal to Bargain

At all times material herein, the Union has been the designated exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act of the unit described above, and the Union has been recognized as such representative by Respondent. Recognition of the Union has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms for the period 1 February 1980 to 31 December 1982.

In about the latter part of 1981, Respondent purchased the assets, name, and goodwill of Sea Isle Hotel, including the facilities, equipment, supplies, and materials, and since that date has been engaged in the same business operations, at the same location, providing the same services, and has as a majority of its employees individuals who were previously employees of Sea Isle Hotel. By virtue of the operations described above, Respondent has continued the employing entity and is a successor of Sea Isle Hotel.

Since on or about 1 November 1982, and continuing to date, Respondent, without notifying the Union or affording the Union an opportunity to bargain on the matter, has failed to abide by, and continues to fail to abide by, the terms and conditions of employment set forth in the collective-bargaining agreement then

in effect,[2] by, inter alia, failing to honor the contractual clauses concerning union security and checkoff, hiring of employees, seniority of employees, wages and classification of employees, working hours and overtime, vacation, holiday pay, pension benefits, health benefits, and dental benefits.

Accordingly, we find that, by the conduct described above, Respondent has, since on or about 1 November 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist

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[2] By failing to respond to any pleadings in this matter, Respondent has failed to deny that at all times material herein, prior to 1 November 1982, the terms and conditions of the Union's most recent collective-bargaining agreement had been in effect.

therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent violated Section 8(a)(5) and (1) of the Act by failing to abide by the terms and conditions of employment set forth in the collective-bargaining agreement described above, without prior notice to or bargaining with the Union. In order to dissipate the effect of these unfair labor practices we shall order Respondent to give effect to and comply with the terms and conditions of employment set forth in the collective-bargaining agreement with the Union, retroactive to 1 November 1982. Further, we shall order that Respondent, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment. Having found specifically that Respondent has failed to honor the provisions of the collective-bargaining agreement concerning hiring of employees, seniority of employees, working hours and overtime, wages and classification of employees, and vacation and holiday pay, we shall order Respondent to make whole the employees in the appropriate unit for any loss of wages or other benefits they may have suffered as a result of Respondent's unlawful conduct, retroactive to 1 November 1982, with interest as provided for in Florida Steel Corporation, 231 NLRB 651 (1977).[3] Further, we shall order Respondent to make all contributions which should have been made

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[3] See generally Isis Plumbing & Heating Co., 138 NLRB 716 (1962), and F. W. Woolworth Company, 90 NLRB 289 (1950).

on behalf of the employees in the unit described above with respect to health, pension, and dental benefits, retroactive to 1 November 1982. Any interest applicable to such payments shall be paid in accordance with the criteria set forth in Merryweather Optical Co., 240 NLRB 1213 (1979). In addition, we shall order Respondent to make employees whole by reimbursing them for any medical, dental, or other expenses ensuing from Respondent's unlawful failure to make such required contributions. See Kraft Plumbing and Heating Inc., 252 NLRB 891, fn. 2 (1980). Further, we shall order Respondent to make whole the Union by transmitting to it the full amount of union dues which Respondent was required to withhold pursuant to the union-security and checkoff provisions of the collective-bargaining agreement from 1 November 1982 until 31 December 1982, with interest calculated in the manner prescribed in Florida Steel Corporation, supra. Finally, we shall order Respondent to make whole its employees in the appropriate unit for any other losses, financial or otherwise, they may have suffered as a result of Respondent's abandonment, since on or about 1 November 1982, of the terms and conditions of employment provided for in the collective-bargaining agreement then in effect.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Larter, N.V. d/b/a Sea Isle Hotel is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and is a successor of Sea Isle Hotel.

2. Hotel, Motel, Restaurant and Hi-Rise Employees and Bartenders Union, Local 355, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees employed by the Employer in the housekeeping department, food and beverage department, including cashiers and checkers, front service department, telephone communications department, maintenance and engineering department and laundry department; but excluding all of the front office cashiers and other clerical employees, executives, department heads, managerial employees, guards and supervisors as defined by the National Labor Relations Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive collective-bargaining representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing on or about 1 November 1982, and at all times thereafter, to abide by the terms and conditions of employment set forth in the collective-bargaining agreement then in effect, without prior notice to and without affording the Union an opportunity to negotiate and bargain with respect to such acts and conduct, Respondent did refuse to bargain collectively, and continues to refuse to bargain collectively, with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate bargaining

unit described above and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Larter, N.V. d/b/a Sea Isle Hotel, Miami Beach, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Hotel, Motel, Restaurant and Hi-Rise Employees and Bartenders Union, Local 355, by failing to abide by the terms and conditions of employment set forth in the most recent collective-bargaining agreement with the Union, without prior notice to and without affording the Union an opportunity to negotiate and bargain with respect to such acts and conduct as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees employed by the Employer in the housekeeping department, food and beverage department, including cashiers and checkers, front service department, telephone communications department, maintenance and engineering department and laundry department; but excluding all of the front office cashiers and other clerical employees, executives, department heads, managerial employees, guards and supervisors as defined by the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Honor and give retroactive effect from 1 November 1982 to the terms and conditions of employment set forth in the collective-bargaining agreement with the above-named labor organization.

(c) Make whole all employees in the above-described appropriate unit in the manner set forth in the section of this Decision entitled ''The Remedy'' for any losses, financial or otherwise, they may have suffered as a result of Respondent's failure, since on or about 1 November 1982, to abide by the terms and conditions of employment set forth in the collective-bargaining agreement then in effect.

(d) Make all contributions which should have been made on behalf of all employees in the above-described appropriate unit

being signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. 23 August 1983

Donald L. Dotson, Chairman

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

WE WILL make whole the Union for any losses it may have suffered as a result of our failure to honor the provisions of the above-mentioned collective-bargaining agreement regarding union security and checkoff, with interest.

WE WILL, upon request, bargain collectively with the above-named Union, as the exclusive representative of all employees in the above-described appropriate bargaining unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

LARTER, N.V. d/b/a SEA ISLE HOTEL

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 706 Federal Office Building, 500 Zack Street, P.O. Box 3322, Tampa, Florida 33602, Telephone 813--228--2641.

with respect to health, pension, and dental benefits in the manner set forth in the section of this Decision entitled ''The Remedy.''

(e) Make whole all employees by reimbursing them, with interest, for any medical, dental, or other expenses ensuing from Respondent's failure to make required contributions to benefit funds.

(f) Make whole the Union in the manner set forth in the section of this Decision entitled ''The Remedy'' for any losses it may have suffered as a result of Respondent's failure to honor its contractual obligations regarding union security and checkoff.

(g) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in checking compliance with this Order.

(h) Post at its facility in Miami Beach, Florida, copies of the attached notice marked ''Appendix.''[4] Copies of said notice, on forms provided by the Regional Director for Region 12, after

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[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT fail to abide by the terms and conditions of employment set forth in the collective-bargaining agreement with Hotel, Motel, Restaurant and Hi-Rise Employees and Bartenders Union, Local 355, with respect to our employees in the following appropriate unit:

> All employees employed by the Employer in the housekeeping department, food and beverage department, including cashiers and checkers, front service department, telephone communications department, maintenance and engineering department and laundry department; but excluding all of the front office cashiers and other clerical employees, executives, department heads, managerial employees, guards and supervisors as defined by the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL honor and give retroactive effect from 1 November 1982 to the terms and conditions of employment set forth in the collective-bargaining agreement with the above-named labor organization.

WE WILL make whole all employees in the above-described appropriate unit for any losses, financial or otherwise, they may have suffered as a result of our failure to abide by the terms and conditions of employment set forth in the above-mentioned collective-bargaining agreement, with interest.

WE WILL make all contributions which should have been made pursuant to the provisions of the above-mentioned collective-bargaining agreement on behalf of all employees in the above-described appropriate unit with respect to health, pension, and dental benefits, with interest.

WE WILL make whole all employees by reimbursing them, with interest, for any medical, dental, or other expenses ensuing from our failure to make required contributions to benefit funds.